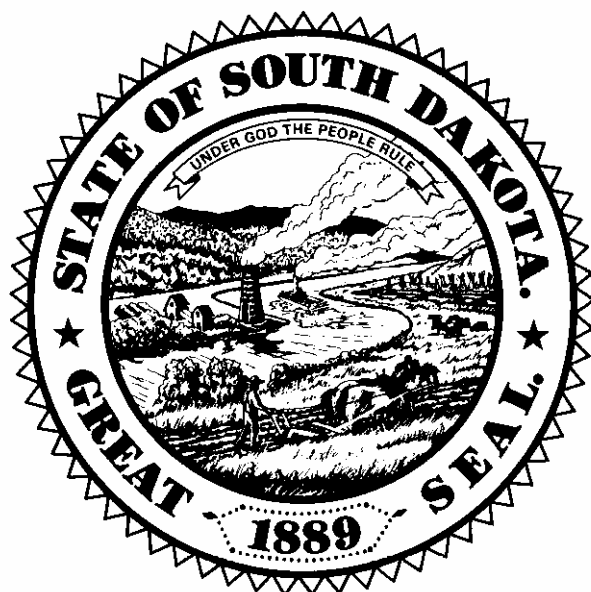


South Dakota Underground Pipeline Task Force



Findings Report

December 1, 2008

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Executive Summary

During the 2008 South Dakota Legislative Session Senate Bill 190, *An Act to provide for regulatory oversight of oil pipelines and to create a task force* was passed into law taking effect July 1, 2008. Section 10 of the Act, now found in South Dakota Codified Law (SDCL) Chapter 34A-18-10 (Appendix A), establishes the South Dakota Underground Pipeline Task Force. The Task Force is made up of seven members appointed by the Governor who are to be knowledgeable of existing federal statutes and regulations and state statutes and rules which govern underground pipeline facilities for the transmission and distribution of water, natural gas, crude oil, ethanol, and refined petroleum products. The appointed members of the Task Force include:

1. Gary Hanson, Task Force Chairman, Commissioner, South Dakota Public Utilities Commission
2. Dennis Davis, Director, South Dakota Association of Rural Water Systems
3. Gordon Woods, Vice President and COO, South Dakota Intrastate Pipeline Company
4. Daniel Holli, Environmental and Regulatory Specialist, Plains Pipeline L.P.
5. Pete Bullene, Environmental Health and Safety Director, Glacial Lakes Energy
6. Troy Styer, Pipeline Safety Coordinator, NuStar Energy and President, South Dakota Pipeline Association
7. Mark Anderson, President, South Dakota State Federation of Labor AFL-CIO

Based on SDCL 34A-18-10, the Task Force has two objectives. 1) Review the status of existing and proposed pipelines in South Dakota and 2) assess the adequacy of state laws and regulations relating to pipelines in South Dakota. In addition, the Task Force is to report its findings to the Governor no later than December 1, 2008.

To accomplish its objectives, the Task Force held four meetings, August 14, 2008, September 22, 2008, October 23, 2008 and November 13, 2008. The Task Force determined there are existing water pipelines, natural gas pipelines, crude oil pipelines and refined petroleum product lines in operation in South Dakota but no existing ethanol pipelines in the state. In addition, there are several water pipeline projects, a methane gas pipeline project and two crude oil pipeline projects proposed in South Dakota. Finally, the Task Force reviewed existing South Dakota law and rules applicable to pipelines and determined them to be adequate, however, the Task Force made several recommendations to continue the safe and reliable operation of South Dakota's pipelines and to ensure the state is prepared for future pipeline development.

The Task Force made the following recommendations:

- 1) The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.
- 2) The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

- 3) The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.
- 4) The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.
- 5) The Task Force recommends the South Dakota Department of Environment and Natural Resources explore its ability to assist Dr. Delvin Deboer, a professor at South Dakota State University, with his research on the impact of petroleum products on plastic waterlines.
- 6) The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution insurance for public and private entities in South Dakota especially for water and waste water systems.
- 7) The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

A copy of this report and the information presented to the Task Force is available for download on the Task Force website, <http://www.state.sd.us/denr/Boards/PipelineTF.htm> or by contacting the South Dakota Department of Environmental and Natural Resources at 605.773.3296.

1.0 Introduction

During the 2008 South Dakota Legislative Session Senate Bill 190, *An Act to provide for regulatory oversight of oil pipelines and to create a task force* was passed into law taking effect July 1, 2008. Section 10 of the Act, now found in South Dakota Codified Law Chapter 34A-18-10 (Appendix A), establishes the South Dakota Underground Pipeline Task Force. The Task Force is made up of seven members appointed by the Governor who are to be knowledgeable of existing federal statutes and regulations and state statutes and rules which govern underground pipeline facilities for the transmission and distribution of water, natural gas, crude oil, ethanol, and refined petroleum products. The appointed members of the Task Force include:

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Based on SDCL 34A-18-10, the Task Force has two objectives. 1) Review the status of existing and proposed pipelines in South Dakota and 2) assess the adequacy of state laws and regulations relating to pipelines in South Dakota. In addition, the Task Force is to report its findings to the Governor no later than December 1, 2008.

To accomplish its objectives, the Task Force held four meetings, August 14, 2008, September 22, 2008, October 23, 2008 and November 13, 2008. This report includes the findings and recommendations of the South Dakota Underground Pipeline Task Force.

2.0 Status of Existing and Proposed Pipelines in South Dakota

The purpose of this section is to review the status of existing and proposed underground pipelines in South Dakota. This section is divided into two groups, existing and proposed pipelines. Within each group, each pipeline type is reviewed.

2.1 Definitions

The purpose of this section is to establish the definitions of existing pipelines and proposed pipelines to be used by the South Dakota Underground Pipeline Task Force.

2.1.1 Existing Pipelines

Existing pipelines includes transmission pipelines that are installed and operational in South Dakota.

2.1.2 Proposed Pipelines

Proposed water pipelines are waterline projects included in the State Water Plan or those that have submitted plans and specifications to the DENR's Drinking Water Program for review.

Proposed natural gas, crude oil, ethanol, and refined petroleum product pipelines include those projects that have applied to the South Dakota Public Utilities Commission for a facility siting permit under the South Dakota Energy Conversion and Transmission Facilities Act or have publicly announced the project in South Dakota.

2.2 Existing Pipelines

Existing pipelines include transmission pipelines that are installed and operational in South Dakota.

2.2.1 Existing Water Pipelines

Existing underground water pipelines transverse many thousands of miles in South Dakota. There are 760 public water systems in South Dakota each utilizing underground pipelines to disperse the water. However, there is no one map available showing all of the water transmission lines. For reference, Figure 1 shows the public water supply systems intakes and Figure 2 is a map of South Dakota's Rural Water system coverage and major distribution lines.

In general, transmission waterlines are buried six feet below grade or deeper and are constructed polyvinyl chloride (PVC), ductile iron or steel. The operating pressure of the waterlines varies depending on pipeline size and system requirements however, the pressure is normally greater than 20 pounds per square inch (psi) with normal operating pressures of 60 to 80 psi (Recommend Standards for Water Works, 2007 Edition).

2.2.2 Existing Natural Gas Pipelines

According to the Federal Pipeline Hazardous Material Safety Administration's Pipeline Mapping System there are approximately 1,458 miles of existing natural gas transmission pipelines in South Dakota. Companies operating natural gas transmission pipelines in South Dakota include: Northern Borders Pipeline, Northern Natural Gas, South Dakota Intrastate Pipeline Company, and the Williston Basin Interstate Pipeline Company. Figure 3 is a map of the natural gas transmission pipelines in South Dakota.

In general, these pipelines are buried with at least 36 inches of cover and are constructed of high strength steel. They range in size from two inches to 36 inches in diameter and have operating pressures ranging from approximately 400 psi – 1,400 psi depending on pipeline size, system requirements and time of year.

2.2.3 Existing Crude Oil Pipelines

There is one, existing crude oil pipeline in South Dakota (Figure 4). This pipeline, operated by Plains Pipeline, L.P., is located in Harding County South Dakota and transports crude oil from Harding County oil producers into North Dakota. The system consists of approximately 22 miles of trunk line with pipeline diameters ranging from two to six inches. The pipeline is constructed of steel and operates below a maximum operating pressure of 1,440 psi. Because this pipeline is considered a gathering pipeline, it is not required to obtain a siting permit from the South Dakota Public Utilities Commission under the Energy Conversion and Transmission Facilities Act.

2.2.4 Existing Ethanol Pipelines

There are no existing ethanol transmission pipelines in operation in South Dakota.

2.2.5 Existing Refined Petroleum Product Pipelines

According to the Federal Pipeline Hazardous Material Safety Administration's Pipeline Mapping System there are approximately 593 miles of existing refined petroleum products transmission pipelines in South Dakota. Companies operating refined petroleum products transmission pipelines in South Dakota include: Magellan Midstream Partners, L.P., Pacific Energy (owned and operated by Plains Pipeline, L.P.), and NuStar Energy L.P. Figure 5 is a map of the refined petroleum products transmission pipelines in South Dakota.

In general, these pipelines are buried with at least 36 inches of cover and are constructed of steel. They range in size from six inches to eight inches in diameter and have operating pressures ranging from approximately 1,200 psi – 1,400 psi depending on pipeline size and system requirements. The refined petroleum products pipelines carry products such as gasoline, diesel fuel and jet fuel to bulk storage terminals in South Dakota.

2.3 Proposed Pipelines

Proposed water pipelines are waterline projects included in the State Water Plan or those that have submitted plans and specifications to the DENR's Drinking Water Program for review. Proposed natural gas, crude oil, ethanol, and refined petroleum product pipelines include those projects that have applied to the South Dakota Public Utilities Commission for a facility siting permit under the South Dakota Conversion and Transmission Facilities Act or have publicly announced the project in South Dakota.

2.3.1 Proposed Water Pipelines

Proposed water pipelines or water projects including pipeline work were considered by the task force if they are part of the State Water Plan or have plans and specifications under review by the DENR's Drinking Water Program. The following sections list the currently proposed water pipeline projects in South Dakota

2.3.1.1 Proposed Projects Listed on the State Water Facilities Plan

The proposed projects on the list below were selected from the 2008 State Water Plan (Appendix D). The proposed projects, each with varying degree of pipeline construction, will be completed in either 2008 or 2009.

Project Sponsor	Project Description
BDM Rural Water	Hecla Area / Internal Expansion
Beresford	East Street Water Main Improvement
Black Hawk WUD	Water Storage and Distribution
Bon Homme – Yankton Water	Douglas County Expansion
Cavour	Waterline Replacement and Meters
DeSmet	Third Street Water Main Replacement
Fall River WUD	Internal Water System Expansion
Green Valley San. District	Water System Construction
Kingbrook RWS	Winfred Water System
Longview San. District	Water Distribution Construction
Menno	Highway 18 Water/Wastewater
Miller	Water Distribution System
Mobridge	Water Main Improvements
Owanka RWS	Construct a New Rural Water System
Pine Cliff Park	Water Distribution
Sioux Falls	Water Distribution Improvements
Spearfish Meadows	Water Distribution System
Tripp County WUD	Water System Expansion
Viewfield Water Association	Rural Water System Construction
Wolsey	Water Distribution
Java	Waterline Replacement
Mid-Dakota RWS	Water Treatment and Distribution

2.3.1.2 Proposed Projects with Plans and Specifications Under Review by the DENR's Drinking Water Program

As of July 2008, there were no proposed water pipeline projects under review by the DENR's Drinking Water Program. Please note, projects move on and off this list frequently. To obtain the most current information please contact Mark Mayer with DENR's Drinking Water Program at (605) 773-3754.

2.3.2 Proposed Natural Gas Pipelines

There are currently no proposed natural gas pipeline projects in South Dakota. There is however, a landfill gas pipeline project proposed in Sioux Falls, South Dakota. This is a joint project between POET and the City of Sioux Falls allowing methane generated from the Sioux Falls Regional Sanitary Landfill to provide energy for POET's ethanol production facility near Chancellor, South Dakota. The methane will be transported by a 10-mile low-pressure pipeline to be completed by the second quarter 2009.

2.3.3 Proposed Crude Oil Pipelines

There are currently two proposed crude oil pipeline projects in South Dakota, TransCanada Keystone Pipeline and the TransCanada Keystone XL Pipeline. These projects are described in more detail below.

2.3.3.1 Proposed TransCanada Keystone Pipeline

The TransCanada Keystone Pipeline is a proposed crude oil pipeline currently under construction in North and South Dakota (Figure 6). The proposed pipeline is a 30-inch diameter crude oil pipeline designed to carry up to 591,000 barrels per day of crude oil from the oil sands in Alberta, Canada to refineries in the Wood River and Patoka, Illinois area and to storage facilities in Cushing, Oklahoma. The pipeline will be constructed with high strength steel and will be buried with a minimum four-foot depth of cover. Operating pressures will range up to 1,440 psi. Construction will continue through 2008 into 2009 with the line scheduled to begin operation late in 2009.

This pipeline was required to obtain a siting permit from the South Dakota Public Utilities Commission under their Energy Conversion and Transmission Facilities law 49-41B. A copy of the permit conditions is included as Appendix E.

2.3.3.2 Proposed TransCanada Keystone XL Pipeline

The TransCanada Keystone XL Pipeline is a proposed crude oil pipeline project projected to transport crude oil from Alberta, Canada to refineries along the Gulf Coast in Texas. The 36-inch diameter pipeline, with an initial capacity of 700,000 barrels per day, would enter South Dakota in northwest Harding County and leave the state in southeast Tripp County (Figure 6). The pipeline will be constructed with high strength steel and will be buried with a minimum four-foot depth of cover. Operating pressures will range up to 1,440 psi. Construction in South Dakota is tentatively schedule to begin in 2011 with the line to begin operation later that year.

2.3.4 Proposed Ethanol Pipelines

There are currently no proposed ethanol pipeline projects in South Dakota.

2.3.5 Proposed Refined Petroleum Product Pipelines

There are currently no proposed refined petroleum product pipeline projects in South Dakota.

2.3.6 Proposed Pipelines Associated with the Hyperion Energy Center

The Hyperion Energy Center is a proposed oil refinery and power plant located north of Elk Point in Union County, South Dakota. Although no pipeline projects associated with this facility have been announced it is likely, if built, this facility would require underground pipelines for

water, crude oil, and refined petroleum products and may require natural gas and ethanol pipelines.

2.4 General Leak Prevention and Detection Information

In general, underground pipelines in South Dakota employ some or all of the following measures to prevent and detect pipeline leaks. Prior to construction of new pipelines, pipeline companies implement quality control programs at the pipe fabrication plant to ensure the pipeline itself meets all of their coating and construction standards. During construction, each weld is inspected using x-ray or ultrasonic technology to ensure the integrity of the weld. Prior to operation, the entire pipeline is hydrostatically tested to 125 percent of the maximum allowable operating pressure to make sure the pipe will not break or leak. To prevent corrosion, the entire pipeline is fusion bond epoxy coated and there is an active cathodic protection system. During operation, the pipelines are remotely monitored 24-hours per day, 365 days per year for signs of leaks and pipeline operators use volume balance systems to confirm product volumes. In addition, periodic aerial inspections are done to look for abnormalities and local pipeline staff inspect the right-of-way during their normal activities. To test the internal integrity of the pipeline, pipeline operators perform periodic internal inspections using in-line inspection tools or “smart pigs”. The pipelines participate in South Dakota’s One Call system. Finally, each pipeline operator is required to develop and maintain emergency response and spill clean up plans for implementation in the event of a pipeline leak.

The table below shows examples of leak detection and prevention methods employed by existing and proposed pipelines in South Dakota

PIPELINE SYSTEM	LEAK PREVENTION AND DETECTION METHODS
Keystone and Keystone XL Pipeline System (proposed crude oil pipelines)	Fusion bond epoxy coated pipelines, field weld inspections, hydrostatic testing, active cathodic protection, 24/365 remote system monitoring and shutdown, volume balance system, aerial inspections 26 time per year, internal inspections using “smart pigs”, use of internal cleaning “pigs”, participate in the One Call system, emergency response plan of file with federal and state regulators.
Plains Pipeline System (existing crude oil)	Continuous monitoring of real-time operational data, remote system shut-down, daily over-short balance using SCADA, high pressure shutdowns on pumps, seal failure alarms on pumps, corrosion inhibiting chemicals injected into crude oil stream, use of internal cleaning “pigs”, external pipeline coatings, cathodic protection, aerial inspections 26 times per year, participation in the One Call system, emergency response planning.
NuStar Energy Pipeline System (refined products)	Volumetric accounting using SCADA, aerial inspections 26 times per year, internal inspections using “smart pigs”, active cathodic protection and

	cathodic protection monitoring, participation in the One Call system, emergency response planning.
South Dakota Intrastate Pipeline Co. (natural gas)	Flame ionization leak detection, active cathodic protection, SCADA to monitor pressure and gas volume accounting, external and internal corrosion direct assessment, in-line inspection, participation in the One Call system and aerial surveys.

2.5 **Pipeline Incident Summary and Spill Response Funds**

The purpose of this section is to review Midwest pipeline incidents and to provide an overview of the South Dakota Regulated Substance Response Fund and the Federal Oil Spill Liability Trust Fund.

2.5.1 **Pipeline Incident Summary**

Appendix F provides a summary of significant pipeline incidents occurring between 1998 and 2008 in South Dakota, North Dakota, Minnesota, Iowa, Nebraska, Montana and Wyoming. The data was gathered from the Pipeline and Hazardous Materials Safety Administration's state information web pages. According to the web page, significant pipeline incidents include incidents with any of the following conditions, 1) a fatality or injury requiring in-patient hospitalization, 2) \$50,000 or more in total costs, 3) highly volatile liquid releases of 5 barrels or more or other liquid releases of 50 barrels or more or 4) liquid releases resulting in an unintentional fire or explosion.

Based on the data presented in Appendix F there were 213 significant pipeline incidents between 1998 and 2008 in these seven states resulting in a gross barrel loss of 105,903 barrels. Of the 213 incidents, 23.9% were caused by material failure and 23.5% were caused by excavation damage. The remaining incidents were caused by human error (7.5%), corrosion (7.5%), natural force damage (10.3%), other outside force damage (8.5%) or other causes (18.8%).

Additional information about pipeline incident cost was presented to the Task Force and can be found in sections 4.2.1.5 and 4.3.1.3 and Appendices G and H of this report.

2.5.2 **South Dakota Regulated Substance Response Fund**

Appendix I provides additional information on the South Dakota Regulated Substance Response Fund. In general, the fund was established to respond to regulated substance releases where there is either no responsible party or the responsible party refuses or is unable to respond. In these situations, the South Dakota Department of Environment and Natural Resources uses the money from the fund to respond by stopping the release and performing any necessary remedial actions. The Department of Environment and Natural Resources is obligated to attempt to cost recover from the responsible party. As of the end of June 2008, the Regulated Substance Response Fund had a balance of \$2,575,500.00.

Additional information about the South Dakota Regulated Substance Response Fund was presented to the Task Force and can be found in sections 4.1.1.4, 4.2.1.4 and 4.3.1.1 and Appendices J, K and L of this report.

2.5.3 Federal Oil Spill Liability Trust Fund

Appendix N provides additional information on the Federal Oil Spill Liability Trust Fund. In general, the fund was established to pay for cleanup costs and damages resulting from oil spills into or threatening navigable waters of the United States. The fund, managed by the U.S. Coast Guard, can be accessed by all federal on-scene coordinators. Like South Dakota's fund, the oil spill trust fund can be used when there is no responsible party or the responsible party refuses to respond. After responding, the lead federal agency bills the responsible party for federal response costs. The projected 2008 year-end fund balance is \$1,000,341,353.

Additional information about the Federal Oil Spill Liability Trust Fund was presented to the Task Force and can be found in sections 4.1.1.3 and 4.2.1.9 and Appendix O of this report.

3.0 Review of Laws and Regulations Relating to Pipelines in South Dakota

The purpose of this section is to review South Dakota laws and regulations as they relate to the construction and operation of pipelines in South Dakota. In addition, to address this topic it is necessary to review the federal regulations applicable to pipeline facilities.

3.1 Review of Federal Laws and Regulations Relating to Pipelines in South Dakota

The U.S. Department of Transportation – Pipeline Hazardous Material Safety Administration is the primary regulatory authority for the construction and operation of interstate hazardous materials pipelines (including natural gas, crude oil, ethanol, and refined petroleum products). This office develops regulations to assure safety in design, construction, testing, operations, maintenance, and emergency response for pipeline facilities.

In order to maintain consistent regulation on interstate pipeline projects the federal code limits state authority on interstate pipeline safety regulations. The following excerpt from the federal code describes this limitation.

Title 49 – Transportation

Subtitle VIII – Pipelines

Chapter 601 – Safety

Sec. 60104 – Requirements and Limitations

(c) A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipelines facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A state authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a

requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

For intrastate pipelines, as stated above, state authorities may adopt additional or more stringent safety standards on intrastate pipeline facilities as long as those standards are compatible with the minimum standards outlined in the federal regulations, however, states are preempted from developing safety standards for interstate pipelines. The South Dakota Public Utilities Commission is the regulatory authority on intrastate pipelines in South Dakota. However, at this time the Public Utilities Commission's authority is limited to gas pipelines only.

The following is a list of the federal laws and regulations applicable to hazardous materials pipelines in South Dakota.

LAW	AGENCY	DESCRIPTION
Public Law 109-468—DEC. 29, 2006		Pipeline Inspection, Protection, Enforcement and Safety Act of 2006
Title 49 – Transportation Subtitle VIII – Pipelines Chapter 601 – Safety	US DOT	Pipeline Safety Law
Sec 60101	US DOT	Definitions
Sec 60102	US DOT	General authority
Sec 60103	US DOT	Standards for liquefied natural gas pipeline facilities
Sec 60104	US DOT	Requirements and limitations
Sec 60105	US DOT	State pipeline safety program certifications
Sec 60106	US DOT	State pipeline safety agreements
Sec 60107	US DOT	State pipeline safety grants
Sec 60108	US DOT	Inspection and maintenance
Sec 60109	US DOT	High-density population areas and environmentally sensitive areas
Sec 60110	US DOT	Excess flow valves
Sec 60111	US DOT	Financial responsibility for liquefied natural gas facilities
Sec 60112	US DOT	Pipeline facilities hazardous to life and property
Sec 60113	US DOT	Customer-owned natural gas service lines
Sec 60114	US DOT	One-call notification systems
Sec 60115	US DOT	Technical safety standards committees
Sec 60116	US DOT	Public education programs
Sec 60117	US DOT	Administrative
Sec 60118	US DOT	Compliance and waivers
Sec 60119	US DOT	Judicial review
Sec 60120	US DOT	Enforcement
Sec 60121	US DOT	Actions by private persons
Sec 60122	US DOT	Civil penalties
Sec 60123	US DOT	Criminal penalties

Sec 60124	US DOT	Biennial reports
Sec 60125	US DOT	Authorization of appropriations
Sec 60126	US DOT	Risk management
Sec 60127	US DOT	Population encroachment
Sec 60128	US DOT	Dumping within pipeline rights-of-way
RULES	AGENCY	DESCRIPTIONS
Title 49 – Transportation Subtitle B, Chapter 1, Subchapter D – Pipeline Safety	US DOT	Pipeline Safety
Part 190	US DOT	Pipeline Safety Program and Rulemaking Procedures
Part 191	US DOT	Transportation of natural and other gas by pipeline; annual reports, incident reports, and safety related condition reports
Part 192	US DOT	Transportation of natural and other gas by pipeline: Minimum federal safety standards
Part 193	US DOT	Liquefied natural gas facilities: federal safety standards
Part 194	US DOT	Response plans for onshore oil pipelines
Part 195	US DOT	Transportation of hazardous liquids by pipeline
Part 198	US DOT	Regulations for grants to aid state pipeline safety programs
Part 199	US DOT	Drug and alcohol testing

3.2 Review of State Laws and Regulations Relating to Pipelines in South Dakota

The following sections summarize the state laws and regulations relating to pipelines in South Dakota. To avoid duplication, the hazardous materials pipelines (natural gas, crude oil, ethanol and refined petroleum products) are grouped together.

3.2.1 Summary of South Dakota Laws and Regulations for Water Pipelines

The following is a list of South Dakota Laws and Regulations applicable to water pipelines in South Dakota

LAW	AGENCY	DESCRIPTION
31-26-22	DOT	Permit to operate on or under state right of ways
34A-2-29	DENR	Plans, Specifications, and Information Required by the Secretary
RULES	AGENCY	DESCRIPTION
70:04:05	DOT	Utility Accommodations on non-Interstate Rights-of-Way
74:53:04	DENR	Works of Sanitary Significance
74:53:04:01	DENR	Copies of plans and specifications to be submitted to department
74:53:04:02	DENR	Plans and specifications to be prepared by competent persons

74:53:04:03	DENR	Revisions of plans and specifications to be submitted
74:53:04:04	DENR	Disposition of approved plans and specifications
74:53:04:05	DENR	Time required for review
74:53:04:06	DENR	Deviation from approved plans and specifications prohibited
74:53:04:07	DENR	Approval void after two years if construction not started
74:53:04:08	DENR	Department to be notified when system or works completed
74:53:05	DENR	Public Water Supply Systems
74:53:05:01	DENR	Definitions
74:53:05:02	DENR	Written approval of plans and specifications required
74:53:05:03	DENR	Approval for operation of public water supply required
74:53:05:04	DENR	Inspections required -- Defects to be corrected
74:53:05:05	DENR	Department to issue minimum requirements to interested persons

3.2.2 Summary of South Dakota Laws and Regulations for Hazardous Materials Pipelines

The following is a list of South Dakota Laws and Regulations applicable to hazardous material pipelines in South Dakota.

LAW	AGENCY	DESCRIPTION
31-26-22	DOT	Permit to operate on or under state right of ways
34A-12-8	DENR	Discharge of regulated substance prohibited--Exception
34A-12-9	DENR	Report of discharge--Rules for reporting
34A-18	DENR	Oil Pipelines
34A-18-1	DENR	Definition of terms
34A-18-2	DENR	Oil spill response plan required
34A-18-3	DENR	Updating of oil spill response plan
34A-18-4	DENR	Consultation with department
34A-18-5	DENR	Time for submission of oil spill response plan
34A-18-6	DENR	Review of oil spill response plan
34A-18-7	DENR	Modifications to oil spill response plan to be submitted
34A-18-8	DENR	Implementation of plan in the event of oil spill
34A-18-9	DENR	Reports regarding spill
49-34B	PUC	Pipeline Safety
49-34B-1	PUC	Definition of terms
49-34B-2	PUC	Rural gathering facility exempt
49-34B-3	PUC	Pipeline safety inspection program created--Program for compliance
49-34B-4	PUC	Promulgation of safety standards--Considerations
49-34B-5	PUC	Noncompliance--Hearing--Corrective action
49-34B-6	PUC	Plan for inspection and maintenance of facility--Inadequate plan--Hearing--Revision
49-34B-7	PUC	Required records and information--Inspection by employee or agent of commission
49-34B-8	PUC	Programs for prevention of damage
49-34B-9	PUC	Inspection fee for intrastate operators--Recovery of unreasonable fees--Pipeline safety account established

49-34B-10	PUC	Calculating inspection fee for intrastate operators
49-34B-11	PUC	Initial inspection fee for intrastate operators--Filing objection--Delinquency fee--Fees credited to pipeline safety account
49-34B-12	PUC	Civil penalty for violations--Maximum penalties--Penalties credited to pipeline safety account--Interstate facilities exempt
49-34B-13	PUC	Conduct in violation of federal act--Authority of commission to pursue remedies
49-34B-14	PUC	Commission as agent of United States Department of Transportation in regulating interstate pipelines
49-34B-15	PUC	Designation of commission's inspectors as federal agents
49-34B-16	PUC	Inspection fee for interstate operators--Objections to fee--Fees deposited in pipeline safety account
49-34B-17	PUC	Calculation of interstate operator's inspection fee
49-34B-18	PUC	Initial inspection fee for interstate operators--Filing objections--Hearings--Delinquency fee
49-34B-19	PUC	Promulgation of inspection and safety rules
49-34B-20	PUC	Promulgation of rules for calculation, assessment, and collection of fees
49-34B-21	PUC	Accident report available in judicial proceedings
49-34B-22	PUC	Trade secrets information confidential
49-34B-23	PUC	Acceptance of federal moneys
49-34B-24	PUC	Waiver of compliance with standards--Reasons to be stated
49-34B-25	PUC	Damaging or tampering with sign or line markers prohibited--Violation as misdemeanor
49-34B-26	PUC	Prohibition against disposing of, destroying or altering pipeline involved in emergency release--Violation as felony
49-34B-27	PUC	Powers of commission in enforcement of chapter
49-41B	PUC	Energy Conversion and Transmission Facilities
49-41B-1	PUC	Legislative findings--Necessity to require permit for facility
49-41B-2	PUC	Definition of terms
49-41B-2.1	PUC	Transmission facility defined
49-41B-3	PUC	Ten-year plan required of utility planning to own or operate energy conversion facilities--Updating of plan—Contents
49-41B-4	PUC	Permit required before construction of facility after certain date
49-41B-4.1	PUC	Trans-state transmission facility--Permit and legislative approval required
49-41B-4.2	PUC	Trans-state transmission line--Criteria required
49-41B-4.3	PUC	Seasonal diversity exchange of electric power
49-41B-4.4	PUC	Trans-state transmission facility--Eminent domain--Acquisition of fee in land contiguous to right-of-way--Divestiture of agricultural land
49-41B-4.5	PUC	Foreclosure on nondivested agricultural land
49-41B-4.6	PUC	Corporate ownership of agricultural land
49-41B-4.7	PUC	Divestiture of less than fair market value not required
49-41B-5	PUC	Notification of intent to apply for permit required before filing application--Time-- Prefiling conference if applicant requests
49-41B-5.2	PUC	Notification of area landowners by mail--Publication of notice of proposed facility--Time for notification

49-41B-11	PUC	Applications for permit--Filing deadline--Form—Contents
49-41B-12	PUC	Deposit required of applicant--Disposition--Minimum and maximum amounts-- Fee for determining environmental impact
49-41B-13	PUC	Denial, return, or amendment of application--Grounds--Applicant permitted to make changes
49-41B-14	PUC	Further data provided prior to hearings if required--Prehearing conference
49-41B-15	PUC	Procedure followed by commission following receipt of application for permit
49-41B-16	PUC	Public hearings held within thirty days after notice
49-41B-17	PUC	Parties to proceedings under chapter
49-41B-17.1	PUC	County auditor as agent for service of process on party--Request for personal service
49-41B-19	PUC	Evidence from state or local agencies relative to environmental, social and economic conditions
49-41B-20	PUC	Final report heard by commission at final hearing--Decision on application--Adoption of committee's report
49-41B-21	PUC	Environmental impact statement
49-41B-22	PUC	Applicant's burden of proof
49-41B-22.1	PUC	Reapplication for permit--Applicant's burden of proof--Environmental impact statement not required
49-41B-22.2	PUC	Reapplication for permit--Discussion of commission as to applicant's burden of proof
49-41B-22.3	PUC	Reapplication for permit--Deposits and fees required
49-41B-23	PUC	Waiver of compliance with chapter on grounds of urgency, disaster, or civil disorder
49-41B-24	PUC	Large facility or pipeline permit--Complete findings required by commission within year of receipt of application
49-41B-26	PUC	Accounting for expenditures of applicant's deposit provided by commission--Refund of unused moneys
49-41B-27	PUC	Construction, expansion, and improvement of facilities
49-41B-28	PUC	Supersession of local land use controls by facility permit upon finding by commission
49-41B-29	PUC	Transfer of permit--Commission approval—Rules
49-41B-30	PUC	Circuit court review of commission decision by aggrieved party—Procedures
49-41B-31	PUC	Order not stayed by appeal--Stay or suspension by court
49-41B-32	PUC	Surety bond required if order stayed or suspended--Other security
49-41B-33	PUC	Revocation or suspension of permit—Grounds
49-41B-34	PUC	Violation of permit requirements as misdemeanor--Civil penalty--Continuing offense
49-41B-35	PUC	Promulgation of rules
49-41B-36	PUC	Authority to route or locate facilities not delegated to commission
49-41B-38	PUC	Indemnity bond for damage to roads and bridges
RULES	AGENCY	DESCRIPTION
20:10:31	PUC	Assessment of Fees for Intrastate Gas Pipeline Operators

20:10:31:01	PUC	Definitions
20:10:31:02	PUC	Scope and application
20:10:31:03	PUC	Reduction of support and direct costs
20:10:31:04	PUC	Assessment of direct costs
20:10:31:05	PUC	Assessment of support costs
20:10:31:06	PUC	Assessment of initial inspection fees
20:10:31:07	PUC	Objection to assessment
70:04:05	DOT	Utility Accommodations on non-Interstate Rights-of-Way
74:10:05:11.01	DENR	Immediate notice by telephone or facsimile required of fire, releases, breaks, leaks, or blowouts
74:10:10:03	DENR	Pipeline maps required
74:34:01	DENR	Regulated substance list and reporting of discharge
74:34:01:01	DENR	Definitions
74:34:01:02	DENR	Applicability
74:34:01:03	DENR	Regulated substances list
74:34:01:04	DENR	Report of known discharge – reportable quantities
74:34:01:05	DENR	Reporting of suspected discharges
74:34:01:06	DENR	Discharge report
74:36:08:12	DENR	National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations)
74:51:01	DENR	Surface water quality standards
74:54:01	DENR	Ground water quality standards
74:56:05	DENR	Remediation criteria for petroleum contaminated soils

4.0 Summary of Task Force Meetings

4.1 First Task Force Meeting, August 14, 2008

The Task Force held their first meeting on August 14, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.1.1 Informational Presentations

4.1.1.1 South Dakota Once Call System

Larry Englerth, Executive Director of South Dakota One Call presented information on the South Dakota One Call system. The presentation provided an overview of the One Call system, the purpose of the system and information and examples of how the system works. In addition, Mr. Englerth described the concept of creating a high profile designation in One Call's database for high profile underground facilities. He explained facilities with this designation would require additional efforts to ensure the one call ticket was properly cleared. Mr. Englerth also discussed the need for One Call to require mandatory damage reporting to ensure any damage to

underground facilities is reported and addressed. Refer to Appendix P for a copy of Mr. Englerth's presentation slides.

4.1.1.2 South Dakota Public Utilities Commission – Pipeline Safety

John Smith, legal counsel for the South Dakota Public Utilities Commission presented information on the Commission's pipeline safety program. The presentation provided an overview of the program's authority, gas statistics for South Dakota, information on federal regulatory authority and a definition for interstate pipelines. Specifically, Mr. Smith explained the federal preemption on state's authority to develop safety regulations on interstate pipelines and explained how the commission currently regulates intrastate gas pipelines. Refer to Appendix Q for a copy of Mr. Smith's presentation slides.

4.1.1.3 Federal Oil Spill Liability Trust Fund

Brian Walsh, Hydrology Specialist with DENR presented a general overview of the Federal Oil Spill Liability Trust Fund and how this fund might be used in South Dakota. In addition, Greg Buie with the U.S. Coast Guard, provided information to the Task Force on the status of the federal response fund and how it operates. For additional information on this fund, refer to sections 2.5.3, 4.1.1.3 and 4.2.1.9 and Appendices N and O of this report.

4.1.1.4 South Dakota Regulated Substance Response Fund

Kim McIntosh, Environmental Senior Scientist with DENR provided an overview of the response fund. The presentation included information on the history of the fund, the use of the fund and the current fund status. For additional information on this fund, refer to sections 2.5.2, 4.1.1.4, 4.2.1.4 and 4.3.1.1 and Appendices I, J, K and L of this report.

4.1.1.5 Pipeline Hazardous Materials Safety Administration (PHMSA)

Harold Winnie, an Outreach Community Assistance & Technical Services Project Manager with the Federal Hazardous Materials Safety Administration, Central Region, provided an overview of PHMSA and the Federal Office of Pipeline Safety. The presentation included discussion on the jurisdiction of the Central Region and information on the best practices for pipeline safety.

4.1.2 Task Force Member Discussion

The Task Force discussed issues including the federal code preemption on state authority to implement safety regulations on interstate pipelines and the cost and availability of pollution liability insurance especially for the state's rural water systems. Following their discussion the Task Force proposed several possible recommendations for further consideration and directed DENR staff to prepare additional information for the next Task Force meeting.

4.1.2.1 Possible Recommendations for Further Consideration

The Task Force identified the following possible recommendations for further consideration.

The task force is considering recommending South Dakota One Call create a high profile designation in their database. Facilities such as hazardous material pipelines would be designated as high profile facilities. When a call ticket was processed near a high profile facility, the facility owner or operator would have to sign-off on the ticket before it is cleared. In addition, the high profile facility owner or operator would be required to have staff present at the excavation site until the excavation is complete.

The task force is considering recommending South Dakota One Call require mandatory damage reporting. If implemented, excavators must report any damage done during an excavation to South Dakota One Call.

The task force is considering a recommendation to expand or make mandatory that all municipalities and counties adopt Wellhead Protection ordinances for regulated public drinking water systems.

The task force is considering recommending the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines.

4.1.2.2 Task Force Direction to DENR Staff

The Task Force directed DENR staff to prepare additional information on the following items for the next Task Force meeting.

Prepare all pre-meeting documents and meeting handouts for placement on DENR's website. In addition, create links on the website leading to Legislative Research Council's webpage and the federal pipeline laws and rules.

Provide the task force with a historical budget of the South Dakota Regulated Substance Response Fund.

Provide the task force with information on the legality of creating a bond or placing a fee on an interstate pipeline running through South Dakota.

Investigate and provide the task force with information on the availability and cost of pollution liability insurance for public and private entities. Include information on current coverage for water and waste water systems in South Dakota.

Investigate and provide the task force with information on other states' cleanup funds or bonds/fees on oil transporters. Compare methods for funding cleanups.

Make available to the task force the voluntary state Wellhead Protection Law.

Investigate and provide information to the task force on whether the South Dakota Regulated Substance Response Fund is sufficiently funded to respond to a pipeline release. Provide to the task force information on how DENR responds and regulates a typical spill.

Create and provide to the task force a map showing the streams that would be eligible for funding from the Federal Oil Pollution Liability Trust Fund.

Provide information to the task force on what happens when private property is contaminated and what options the property owner would have to recover damages.

Arrange a presentation on the impacts of petroleum on plastic waterlines.

Schedule the next task force meetings. Consider the following dates for September, the 22, 29, and 30. Tentatively schedule the October meeting for October 23.

4.2 Second Task Force Meeting, September 22, 2008

The Task Force held their second meeting on September 22, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.2.1 Informational Presentations

4.2.1.1 DENR's Source Water Protection and Wellhead Protection Program

Tom Brandner, Natural Resources Engineering Director with DENR, provided the Task Force with an overview of DENR's Source Water and Wellhead Protection Programs. Included in the presentation was a description of the legal authority for the Wellhead Protection Program, a description of how local governments administer the program, statistics on how many local governments use the program and information on how TransCanada used the programs as a planning tool in the development of their pipeline routes. For a copy of Mr. Brandner's presentation and the South Dakota wellhead protection laws refer to Appendices R and S of this report.

4.2.1.2 Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Joe Nadenicek, Staff Attorney with the DENR, discussed the Dormant Commerce Clause and federal preemption as they relate to the imposition of a per barrel cleanup fee on interstate pipeline systems. Mr. Nadenicek informed the Task Force a per barrel fee on interstate pipelines was very likely in conflict with the dormant commerce clause. Refer to Appendix T for a copy of Mr. Nadenicek's presentation slides.

4.2.1.3 Examples of Other States Cleanup Funds

Brian Walsh, Hydrology Specialist with DENR, presented information to the Task Force on cleanup funds used in other states. The states reviewed included Alaska, California, Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. Although most other states have environmental response cleanup funds Mr. Walsh did not find any other states imposing a per barrel fee on interstate pipelines for the purposes of

funding an environmental cleanup fund. Refer to Appendix M for a table displaying the state cleanup funds.

4.2.1.4 Historical Budget of the Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with a table detailing the historical budget on South Dakota's Regulated Substance Response Fund. Refer to Appendix J for a copy of the table presented by Mr. Walsh.

4.2.1.5 Review of Pipeline Incident Costs

Brian Walsh, Hydrology Specialist with the DENR, provided information to the Task Force on the cost of pipeline incidents in South Dakota, surrounding states and the United States as a whole based on data from the Pipeline Hazardous Material Safety Administration's significant incident database. The data indicated the average cost of a pipeline incident in the United States between 1988 and 2008 is \$607,649. Refer to Appendix G for a copy of Mr. Walsh's presentation slides.

4.2.1.6 Availability and Cost of Liability Insurance for Public and Private Entities

Gary Joyce, Account Executive with Howalt-McDowell Insurance, Inc., provided the task force with an overview of the availability of pollution liability insurance and explained why most business in South Dakota did not have coverage. In addition, he informed the task force that most general liability policies exclude pollution coverage.

In addition, Mr. Walsh with the DENR requested information from the South Dakota Municipal League in an attempt to determine if South Dakota municipalities carry pollution liability insurance. In response, the Municipal League forwarded the information request to the South Dakota Public Assurance Alliance who responded with a letter from their legal council. Refer to Appendix U to view a copy of the letter.

4.2.1.7 DENR Spill Response Procedures

Kim McIntosh, Environmental Senior Scientist with the DENR, presented information to the task force on the DENR's typical spill response procedures. The presentation covered how spills are reported and responded to and the circumstance under which the DENR will take action using the Regulated Substance Response Fund. Refer to Appendix V for a copy of Ms. McIntosh's presentation slides.

4.2.1.8 What Happens When Private Property is Contaminated?

Brian Walsh, Hydrology Specialist with the DENR, discussed the options an impacted private property owner would have in the event of damages to him or his property due to a pipeline release. He explained to the task force South Dakota's Regulated Substance Response Fund can only pay for cleanup costs. In some instances, the Federal Oil Spill Liability Trust Fund may reimburse for downstream damages from an oil release. However, in many cases, the impacted

individual's only recourse to recover damages, beyond cleanup, may be to pursue litigation against the responsible party.

4.2.1.9 Federal Oil Spill Liability Trust Fund – Eligible Areas in South Dakota

Brain Walsh, Hydrology Specialist with the DENR, presented a map to the task force showing the national hydrography dataset for South Dakota. The U.S. Coast Guard uses this data set to help determine if an oil spill is eligible for reimbursement under the Federal Oil Spill Liability Trust Fund. He further indicated there is no single map available showing whether an oil spill is eligible for reimbursement under the federal fund. The U.S. Coast Guard determines eligibility on a case-by-case basis. Refer to Figure 7 to review the map presented by Mr. Walsh.

4.2.1.10 Petroleum Impacts on Plastic Waterlines

Dr. Delvin DeBoer, Professor of Civil and Environmental Engineering and the Director of Water and Environmental Engineering Research Center with South Dakota State University, presented the task force with an overview of the effects of petroleum on plastic waterlines and gaskets. Refer to Appendix W for a copy of Mr. DeBoer's presentation slides.

4.2.1.11 Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

Joe Nadenicek, Staff Attorney with the DENR, provided the task force with an explanation of the recent Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities in South Dakota. Refer to Appendix X for a copy of Mr. Nadenicek's presentation slides.

4.2.2 Task Force Member Discussion

Task Force member discussion focused on the topics presented during the meeting.

4.2.2.1 Possible Recommendations for Further Consideration

The task force did not make any possible recommendations for further consideration at this meeting. Instead, they decided to continue their review of the available information and make their final recommendations at the October 23, 2008 task force meeting.

4.2.2.2 Task Force Direction to DENR Staff

The task force directed DENR staff to revise the minutes from the August 14, 2008 meeting and circulate to the task force members for review and approval at the October 23, 2008 meeting.

The task force directed DENR staff to provide additional information on the fines paid into the South Dakota Regulated Substance Response Fund and to explain the \$567,072 transfer to the fund made in FY 2000.

The task force directed DENR staff to provide information on the tax oil producers pay in South Dakota.

The task force directed DENR staff to provide a breakdown of pipeline incident costs in South Dakota and Minnesota by material released.

The task force directed DENR staff to provide information on the number of petroleum releases in South Dakota by source. Specifically, pipeline releases vs. transportation releases.

The task force directed DENR staff to schedule two additional task force meetings for October 23, 2008 at 9:00 AM and November 13, 2008 at 9:00 AM.

4.3 Third Task Force Meeting, October 23, 2008

The Task Force held their third meeting on October 23, 2008 in Pierre, South Dakota. The following sections summarize the information presented at the meeting and the task force member discussions. For the complete agenda, minutes and informational presentations refer to the Appendix of this report.

4.3.1 Informational Presentations

4.3.1.1 Additional Information on the South Dakota Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with additional information on the Regulated Substance Response Fund. Specifically, Mr. Walsh answered two questions asked by Task Force members during the September 22, 2008 meeting. First, Mr. Walsh explained the \$567,072 transfer into the fund in fiscal year 2000 was money returned to the fund because of the removal of a fund cap that had been in place for the previous five years. Second, Mr. Walsh provided the Task Force information on the amount and type of fines paid into the Regulated Substance Response Fund (Appendix L). Refer to Appendix K for a copy of Mr. Walsh's presentation slides.

4.3.1.2 South Dakota Mineral Severance Tax

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with general information about the South Dakota Mineral Severance Tax. Refer to Appendix Y for a copy of Mr. Walsh's presentation slides.

4.3.1.3 Additional Information on Pipeline Incident Cost Data

Brian Walsh, Hydrology Specialist with DENR, presented additional information to the Task Force on pipeline incident cost data. Specifically, at the request of the Task Force, Mr. Walsh presented a breakdown of pipeline incidents in South Dakota and Minnesota by material released. Refer to Appendix H for a copy of Mr. Walsh's presentation slides.

4.3.1.4 Review of South Dakota Petroleum Spills by Source

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with the number of South Dakota petroleum spills by source. Specifically, at the request of the Task Force, Mr.

Walsh compared the number of transportation petroleum spills to the number of pipeline petroleum spills. Refer to Appendix Z for a copy of Mr. Walsh's presentation slides.

4.3.1.5 Review of Regulated Substance Response Fund and DENR Spill Response Procedures

Per Chairman Hanson's request, Kim McIntosh, DENR, reviewed DENR's spill response procedures and the use of the Regulated Substance Response Fund. Specifically, Ms. McIntosh informed the task force the state's Regulated Substance Response Fund and the Federal Oil Spill Liability Trust Fund could be used simultaneously.

4.3.2 Task Force Member Discussion

Task Force member discussion focused on the development and approval of final recommendations to be included in the Task Force report to the Governor. The section below describes those discussions in more detail.

4.3.2.1 Recommendations Considered for Inclusion in the Final Task Force

4.3.2.1.1 Proposed Recommendation #1 – SD One Call High Profile Facility Database

The first recommendation considered by the Task Force concerned South Dakota One Call creating a high profile designation for facilities such as hazardous materials pipelines. Once designated as high profile, additional steps would need to be taken before One Call would clear an excavation ticket near one of the high profile facilities. Task Force members were in agreement with this recommendation however, they did not feel the high profile designation should be limited to hazardous material pipelines. Therefore, the Task Force did not specifically designate which facilities the One Call system should consider as high profile. In addition, the Task Force did not want to dictate in their recommendation what additional steps One Call would require excavators and facility operators to undertake. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The South Dakota Underground Pipeline Task Force supports South Dakota One Call in the development of a high profile database identifying high profile underground facilities.

Based on subsequent input for the Executive Director of South Dakota One Call the above recommendation was revised to reflect South Dakota One Call's status with respect to the development of a high profile facility database. The revised recommendation is shown below.

The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.

4.3.2.1.2 Proposed Recommendation #2 – SD One Call Mandatory Damage Reporting

The second recommendation considered by the Task Force concerned South Dakota One Call mandatory damage reporting. Discussion on this topic included what enforcement would be taken if excavators did not report damage or failed to contact One Call prior to excavation. Task

Force members agreed that issue was for One Call to manage. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends South Dakota One Call require mandatory damage reporting.

Based on subsequent input from the Executive Director of South Dakota One Call the above recommendation was revised to include the cooperation of the South Dakota Public Utilities Commission Pipeline Safety Program in the development and implementation of the mandatory damage reporting program. The revised recommendation is shown below.

The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

4.3.2.1.3 Proposed Recommendation #3 – Wellhead Protection

The third recommendation considered by the Task Force concerned making mandatory for counties or municipalities adoption of wellhead protection ordinances for regulated public drinking water systems. Although Task Force members agreed in general with this recommendation, there was discussion on whether it was appropriate for the Task Force to recommend implementation be mandatory. Task Force members thought this might be viewed as requiring an unfunded mandate or may place unachievable requirements on some counties. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.

4.3.2.1.4 Proposed Recommendation #4 – SD PUC Liquids Program

The fourth recommendation considered by the Task Force concerned the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines from the Federal Department of Transportation. Discussion on this issue centered on whether the Task Force should recommend the Commission acquire this program not knowing the necessary staffing needs and budget constraints of the Commission. Based on the Task Force's discussion members made and approved (via a 4-3 vote) the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.

4.3.2.1.5 Proposed Recommendation #5 – DENR Guidance on Pipeline Crossings

The fifth recommendation considered by the Task Force concerned having the DENR develop guidance on how to encase plastic waterlines that cross under other pipelines. Discussion on this issue include whether this task was within DENR's scope as a regulatory agency. Also discussed

was what if the guidance became a standard and existing plastic waterlines crossing hazardous material pipelines required encasement or retrofitting to meet the standard could this become a burden on the water systems in South Dakota. Based on the Task Force's discussion members did not support this recommendation for inclusion in the final report.

4.3.2.1.6 Proposed Recommendation #6 – Petroleum Impacts on Plastic Waterlines

The sixth recommendation considered by the Task Force concerned having the DENR become involved with Dr. Delvin DeBoer, Director of the Water & Environmental Engineering Research Center at SDSU, in his research on the impact of petroleum products on plastic waterlines. Discussion on this issue included what was meant by the word involved. Task Force members felt it was unlikely DENR could fund the study. In addition, Task Force members asked DENR staff if Dr. DeBoer had contacted DENR and requested their involvement. DENR staff said he had not and Task Force members questioned if they should try to force cooperation that did not seem to be developing on its own. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends DENR explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.

4.3.2.1.7 Proposed Recommendation #7 – Pollution Liability Insurance

The seventh recommendation considered by the Task Force concerned having the South Dakota Department of Revenue, Division of Insurance review the availability of pollution liability insurance in South Dakota especially for water and waste water systems. There was only limited discussion on this issue and the Task Force members were in support of the recommendation. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution liability insurance for public and private entities in South Dakota especially for water and waste water systems.

4.3.2.1.8 Proposed Recommendation #8 – Regulated Substance Response Fund

The eighth recommendation considered by the Task Force concerned the preservation of the South Dakota Regulated Substance Response Fund for uses of the fund as outlined in SDCL 34A-12. During the first three task force meetings, there was considerable discussion about who would pay for a cleanup if the responsible party was unable or refused to do so. Task Force members were presented information on the Regulated Substance Response Fund, the Oil Spill Liability Trust Fund and the legality of imposing a fee on interstate pipelines. Based on this information the Task Force did not recommend any fees or fund increases do to the potential legal issues of doing so and the coverage already provided by the Regulated Substance Response Fund and the Oil Liability Trust Fund. However, the Task Force thought it was important to preserve the Regulated Substance Response Fund for its intended use. Below is the Task Force's approved recommendation on this issue.

The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

4.3.2.2 Task Force Direction to DENR Staff

The task force directed DENR staff to finalize the Draft Task Force findings report for review and approval by the Task Force at their final meeting.

4.4 Final Task Force Meeting, November 13, 2008

The Task Force held their final meeting on November 13, 2008 in Pierre, South Dakota. During this meeting, the Task Force reviewed and approved the final findings report. The Task Force directed DENR staff to finalize the report for submittal to the Governor by the December 1, 2008 deadline.

5.0 Conclusion

Senate Bill 190, passed by the 2008 South Dakota Legislature, established the South Dakota Underground Pipeline Task Force. The Task Force has two objectives. 1) Review the status of existing and proposed pipelines in South Dakota and 2) assess the adequacy of state laws and regulations relating to pipelines in South Dakota. In addition, the Task Force is to report its findings to the Governor no later than December 1, 2008.

The Task Force members, appointed by the Governor, accomplished these objectives with four meetings and the preparation of this findings report. As described above, there are existing water pipelines, natural gas pipelines, crude oil pipelines and refined petroleum product lines in operation in South Dakota but no existing ethanol pipelines in the state. In addition, there are several water pipeline projects, a methane gas pipeline project and two crude oil pipeline projects proposed in South Dakota. Finally, the Task Force reviewed existing South Dakota law and rules applicable to pipelines and determined them to be adequate, however, the Task Force made several recommendations to continue the safe and reliable operation of South Dakota's pipelines and to ensure the state is prepared for future pipeline development. The Task Force recommendations are presented in section 6.0 of this report.

6.0 Recommendations

The following are the recommendations of the South Dakota Underground Pipeline Task Force.

- 1) The Task Force recommends South Dakota One Call explore the development of a high profile database identifying high profile underground facilities.
- 2) The Task Force recommends South Dakota One Call require mandatory damage reporting. The Task Force further recommends South Dakota One Call work with the South Dakota Public Utilities Commission – Pipeline Safety Program to develop and implement this program.

- 3) The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.
- 4) The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the Federal Department of Transportation.
- 5) The Task Force recommends the South Dakota Department of Environment and Natural Resources explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.
- 6) The Task Force recommends the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution insurance for public and private entities in South Dakota especially for water and waste water systems.
- 7) The Task Force recommends the state Regulated Substance Response Fund be maintained and preserved as authorized in SDCL 34A-12 to ensure the state always has the capacity to provide for the cleanup of regulated substances during emergencies or when necessary to protect the public health, safety, welfare, or the environment.

7.0 Availability of Task Force Information

A copy of this report and the information presented to the Task Force is available for download on the Task Force website, <http://www.state.sd.us/denr/Boards/PipelineTF.htm> or by contacting the South Dakota Department of Environmental and Natural Resources at 605.773.3296.